

SENATE COMMITTEE ON WATER AND LAND USE

February 16, 1999 Hearing Room B

1:00 PM Tapes 21 - 22

MEMBERS PRESENT: Sen. Veral Tarno, Chair

Sen. Tony Corcoran, Vice-Chair

Sen. Marylin Shannon

Sen. Thomas Wilde

Sen. Gary George

MEMBER EXCUSED:

STAFF PRESENT: Raymond J. Kelly, Administrator

Diana Bronson, Administrative Support

MEASURES HEARD: SB 461 Public Hearing

SB 462 Public Hearing

SB 86 Public Hearing and Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 21, A		
005	Chair Tarno	Opens committee meeting at 1:19 p.m. and opens public hearing on SB 461.
<u>SB 461 PUBLIC HEARING</u>		
006	Ray Kelly	Committee Administrator summarizes SB 461.
031	Larry George	Executive Director, Oregonians in Action (OIA). Presents (EXHIBIT A) . Gives

		testimony in support of SB 461. Gives brief explanation of takings law.
086	George	Continues to read written testimony.
137	Sen. Corcoran	Expresses concern that persons could apply for the ability to zone a national guard armory in an exclusive farm use zone.
139	George	Responds that Sen. Corcoran's concern is a possibility. States SB 461 restores fairness, which is missing in the current law.
164	Charlie Swindells	1000 Friends of Oregon. Explains that 1000 Friends is neutral on SB 461.
211	Chair Tarno	Asks if "ripeness" is an issue that should be reviewed.
211	Swindells	Responds that in his opinion, no. Gives brief description of takings claim.
260	Sen. Corcoran	Refers to the basic language in SB 461, Section 1, Subsection 16, and asks if a claimant would need to demonstrate the taking before getting to the question of ripeness.
281	Swindells	Responds that the whole case is put before the reviewing tribunal and the first thing the tribunal does is to address the ripeness issue. States they will not get into whether a taking has occurred if it is not ripe.
288	Sen. Corcoran	Asks if the language would take the ripeness out.
290	Swindells	States he does not think it would change anything.
329	Phillip Fell	League of Oregon Cities (LOC). States the LOC opposed a similar bill in Congress in 1998. Gives testimony in opposition to SB 461.
362	Chair Tarno	Asks Fell if he feels the ripeness issue is not an issue for the LOC.
363	Fell	States he thinks ripeness is an issue, but people need to go through the process before they get to the courts.
376	Sen. Wilde	States that the land owner must pay the same fees as the local governments to obtain legal counsel. States that there probably was an expectation when owning that property.
409	Chair Tarno	States Swindells did not find a problem in SB 461.

419	Fell	States that if this is a land use issue it will place small communities in a worse position to implement their land use plan.
<u>SB 462 PUBLIC HEARING</u>		
445	Kelly	Committee Administrator. Summarizes SB 462.
TAPE 22, A		
018	Larry George	Oregonians In Action (OIA). Presents (EXHIBIT B) . Supports SB 462. States that SB 462 is an attempt to adopt requirements that regulations contain clear and objective criteria.
052	George	States that OIA is currently drafting proposed amendments to clarify language in SB 462, to include that the "clear and objective" requirement could apply to the state land use goals.
064	Sen. Corcoran	Asks for clarification on where the Land Use Board of Appeals (LUBA) case is.
065	George	States the case is out of Ashland with some clear and objective standard requirements on their hillside ordinance.
068	Sen. Corcoran	Comments he was curious as to what went on in that case and the outcome.
069	George	States that Dave Hunnicutt (OIA legal counsel) litigated the case. OIA made the argument that "aesthetic resources" need to designate clear and objective standards.
082	Sen. Corcoran	Asks for clarification of the existence in ORS 197.307 of the "clear and objective" criteria.
085	George	Explains the criteria for the needed housing requirements.
090	Sen. Corcoran	Comments that it would be logical to have different standards for residential development and for the approval of manufactured dwellings. Reads portions of SB 462 and requests George to explain some of the wording.
133	George	Responds.
143	Sen. Wilde	States this bill was around last session under the guise of SB 470 and SB 475. States this is as much a land use issue as it is a constitutional issue. States there is a procedural due process and a substantive due process, and believes that clear and objective criteria fall under the procedural due process, which is a constitutional issue, and the government has managed to skirt that issue.

171	Charlie Swindells	1000 Friends of Oregon. States they are neutral on SB 462 as there are positive and negative sides to this bill.
213	Swindells	Continues with issues that relate to SB 462.
270	Swindells	Continues with testimony and reiterates 1000 Friends of Oregon are for "managed" growth and not "no" growth for Oregon.
297	Sen. Wilde	Explains bills should be written under clear and objective criteria by giving ranges. States the government must stop treating people in dissimilar ways.
340	Bob Rindy	Department of Land Conservation and Development (DLCD). Presents (EXHIBIT C) . Opposes SB 462. Asks the committee to encourage LCDC and local governments to use the safe harbor approach used in HB 3661.
359	Chair Tarno	Questions Rindy for clarification of bare land versus housing. States he heard there are definitions for clear and objective standards for housing, but asks if there are definitions for bare land.
363	Rindy	State he does not think the LCDC's definitions apply specifically to housing or bare land. Continues testimony.
433	Rindy	Continues testimony regarding general standards.
TAPE 21, B		
035	Sen. Corcoran	Asks Rindy if SB 462 would create excessive laws.
040	Rindy	Responds that the way SB 462 is written, it would require LCDC and every local government to adopt clear and objective standards for everything that is a land use regulation.
<u>SB 86 PUBLIC HEARING</u>		
071	Chair Tarno	Advises that SB 91 will be carried over to a later date as there are amendments to be proposed and they are not completed. Closes public hearing and opens work session on SB 86.
<u>SB 86 WORK SESSION</u>		
088	Sen. Wilde	MOTION: Moves SB 86 to the floor with a DO PASS recommendation.

		VOTE: 4-1 AYE: 4 - George, Shannon, Wilde, Tarno NAY: 1 - Corcoran
	Chair Tarno	The motion CARRIES. SEN. TARNO will lead discussion on the floor.
092	Chair Tarno	Adjourns meeting at 2:28 p.m.

Submitted By, Reviewed By,

Diana Bronson, Raymond J. Kelly,
Administrative Support Administrator

EXHIBIT SUMMARY

A ñ SB 461, Written testimony, Larry George, 4 pp

B ñ SB 462, Written testimony, Larry George, 3 pp

C ñ SB 462, Written testimony, Bob Rindy, 3 pp